that the article had been shipped on or about November 17, 1919, by A. Cohen & Co., Eagle Pass, Tex., and transported from the State of Texas into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel in that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance.

On May 3, 1920, A. Cohen & Co., claimant, having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the claimant upon the payment of the costs of the proceedings and the filing of a bond, in conformity with section 10 of the act.

E. D. BALL, *Acting Secretary of Agriculture.*

8344. Adulteration of pecan nuts. U. S. * * * v. 332 Sacks Containing Pecan Nuts. Consent decree of condemnation and forfeiture. Product released on bond. (F. & D. No. 11543. I. S. No. 29–r. S. No. E–1871.)

On December 2, 1919, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 332 sacks containing pecan nuts, at New York, N. Y., alleging that the article was shipped on or about October 7, 1919, by the Border National Bank, Eagle Pass, Tex., and transported from the State of Texas into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in that the article consisted in part of a filthy, decomposed, and putrid vegetable substance.

On January 22, 1920, F. S. E. Gunnell & Co., claimant, having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be delivered to the claimant upon the payment of the costs of the proceedings and the filing of a bond, in conformity with section 10 of the act.

E. D. BALL, *Acting Secretary of Agriculture.*

8345. Alleged misbranding of "Sulfox." U. S. * * * v. Eman Mfg. Co., a Corporation. Tried by the court. Verdict of acquittal. (F. & D. No. 11635. I. S. No. 2657–r.)

At the November, 1919, term of the District Court of the United States for the District of Colorado, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in the District Court aforesaid an information against the Eman Mfg. Co., a corporation, Denver, Colo., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about April 14, 1919, from the State of Colorado into the State of California, of a quantity of an article, labeled in part "'Sulfox' A Medicinal Water Artificially Prepared Sole owners and manufacturers The Eman Mfg. Co., Incorporated Main office 1426 Curtis Street Denver, Colo.," which was alleged to be misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it was an aqueous solution consisting essentially of sulphuric acid and traces of calcium sulphate with a very faint trace of sulphur dioxid.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements included in the circulars accompanying the article falsely and fraudulently represented it to be effective as a pre-

ventive, treatment, remedy, and cure for rheumatism, catarrh, la grippe, kidney and stomach trouble, hay fever, bronchitis, sugar diabetes, paralysis, St. Vitus' dance, indigestion, pyorrhea and other blood infections, lupus, cancer, gangrene, blood poisoning, dropsy, neuritis, piles, ulcers, eczema, erysipelas, tuberculosis, and germ propagation in the intestines, when, in truth and in fact, it was not.

On June 5, 1920, an agreed statement of facts was filed by the plaintiff and defendant, whereby, among other things, trial by jury was expressly waived, and it was agreed that the court should hear and determine the cause upon the stipulation and agreement of facts and the laws applicable thereto. On August 23, 1920, the cause having been tried upon the agreed statement of facts, the defendant was found not guilty and discharged, as will more fully appear from the following decision by the court, (Lewis, *D. J.*):

The defendant prepares and offers for sale a fluid under the trade-mark "Sulfox," and the information charges that in April, 1919, it shipped from Denver to San Francisco, in interstate commerce, a number of bottles of the preparation which were misbranded as to its therapeutic and curative effects. When defendant was brought in to plead there was a statement of facts by counsel which raised a doubt as to whether the Food and Drugs Act had been violated as charged. Thereupon the district attorney and counsel for defendant filed a stipulation waiving a jury and setting out the facts in the case, from which it appears that one Elgar O. Eaton, one of plaintiff's agents, whose duty it was to investigate violations of the act, wrote and mailed to defendant the following letter:

"San Francisco, April 9, 1919. Eman Co., Denver, Colo. Dear Sirs: I have heard of your treatment called 'Sulfox.' I want to try it and I am sending $3.00 for a case of it. Send to my room at 972 Sutter Street, room 806. Ed. Eaton."

Eaton, before ordering the shipment, went to a druggist at San Francisco and asked for "Sulfox." The druggist had none. Eaton asked the druggist to order some for him. The druggist did so, but defendant refused to fill the order of the druggist. Eaton then ordered the shipment direct to himself by means of the foregoing letter. The defendant did not know at the time it made the shipment that Eaton was an employee of the United States Government and supposed the shipment was being made to one intending to use it for medicinal purposes as a remedy for some of the diseases for which it was recommended by the circulars accompanying it. The stipulation further recites: "That in making said order and inducing said shipment it was not the intention of the said Eaton to use said 'Sulfox' as a medicine or as a treatment for the cure, mitigation, or prevention of disease, but the shipment was procured by him for the sole purpose of analyzing the substance and of procuring evidence against the shipper of a violation of the Food and Drugs Act.

The district attorney relies upon Grimm *v.* United States, 156 U. S., 604, and cases which follow it, in urging that a plea of guilty be entered and a fine imposed, and of course if the facts here bring the case within the rule there announced that must be done, notwithstanding a majority of the State courts appear to hold a contrary view. When the Grimm case was considered below Judge Thayer held that the facts established guilt because the Government agent who induced the defendant to write the nonmailable letter did not request the defendant to put the letter in the mail, but left the means of transmission wholly to the defendant's selection. He said: "If such act is done voluntarily and intentionally—that is to say, if the nonmailable letter is deposited in the mail by the accused without solicitation on the part of the officer that the mail be used to convey such intelligence—the weight of judicial opinion seems to be that the act does not lose its criminal character, though the offense may have been committed in responding to an inquiry from a person in the Government service which was made under an assumed name for the purpose of concealing his identity. * * * In the case at bar the evidence did not show that the accused was solicited to commit the offense charged in the indictment. The selection of the public mail as the medium for giving information where the most lewd and indecent pictures could be obtained was the voluntary act of the defendant, and he is criminally responsible therefor." 50 Fed., 528. I can conceive of no way in which the defendant could have trans-

mitted "Sulfox" to Eaton as requested in his letter that would not have been an interstate shipment. However, the Supreme Court, in considering Grimm's case on error, made no mention of the position taken by Judge Thayer, but rested its affirmance on other ground. Mr. Justice Brewer, speaking for the court in that case, says: "It does not appear that it was the purpose of the post-office inspector to induce or solicit the commission of a crime, but it was to ascertain whether the defendant was engaged in an unlawful business." This language is a clear indication of the importance of the purpose of the Government agent, that is, as to whether the act which he requests the citizen to do is for the purpose of inducing him to violate the statute. That this is so is more definitely stated in Price *v.* United States, 165 U. S., 311, at page 315: "It appears from the bill of exceptions that the Government inspector who investigated the prosecution of this case had been informed that the statute was being violated, and for the purpose of discovering the fact whether or not the plaintiff in error was engaged in such violation, the inspector wrote several communications of the nature of decoy letters, which are set forth in the record, asking the plaintiff in error to send him through the mail certain books of the character covered by the statute, which the plaintiff in error did, as is alleged by the prosecution and as has been found by the verdict of the jury. This has been held to constitute no valid ground of objection." The excerpt from the Grimm case is repeated in Andrews *v.* United States, 162 U. S., 420. The stipulation does not disclose that the defendant here has ever sent "Sulfox" in interstate shipment other than the two bottles to Eaton in response to his letter. Eaton's failure to induce the defendant to violate the statute by shipping to the druggist, his letter to the defendant, the absence of facts as a basis from which he could believe or suspect that the defendant had on other occasions violated the statute, and the stipulation, causes me to reach the conclusion that he wrote the letter to the defendant, not for the purpose of discovering violations but with the intention and purpose of inducing the defendant to violate the statute, and that on these facts Grimm's case is not an authority in support of the prosecution, and that in the interests of a sound public policy the defendant should be found not guilty and discharged. Woo Wai *v.* U. S., 223 Fed., 412; Sam Yick *v.* U. S., 240 Fed., 60.

S346. Adulteration and misbranding of Pepso-Laxatone. U. S. * * * v. 10 Dozen Bottles of Drugs Called Pepso-Laxatone. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 11870. I. S. No. 561-r. S. No. E-1919.)

On January 7, 1920, the United States attorney for the Northern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of a certain quantity of a certain article, labeled "Pepso-Laxatone," at Atlanta, Ga., consigned by the Burlingame Chemical Co., Los Angeles, Calif., alleging that the article had been shipped on or about August 13, 1919, and transported from the State of California into the State of Georgia, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted of a solution composed essentially of extractives of cascara sagrada, hydrochloric and lactic acids, sugar, alcohol, and water, with not to exceed 0.006 gram of pepsin per fluid ounce and not more than a trace of pancreatin and diastase.

Adulteration of the article was alleged in the libel in that the strength of the article fell below the professed standard and quality under which it was sold.

Misbranding of the article was alleged in that the statement on the labels and packages containing the article, regarding it, to wit, "Pepso-Laxatone is a solution of Pepsin, Diastase, Pancreatine," was false and misleading in that it represented that the product contained a substantial amount of pepsin, diastase, and pancreatin, whereas, in truth and in fact, the article contained not more than a trace of pepsin, and not more than a trace of pencreatin and diastase. Further misbranding was alleged in that the statements on the labels and on the packages, regarding the curative and therapeutic effects of the article, falsely